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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

WESTEL SAMOA, INC.)

and)

WESTEL, L.P.)

For Broadband Block F Personal)
Communications Systems Facilities)

WT Docket No. 97-199

TO: Honorable Arthur I. Steinberg
Administrative Law Judge

PETITION TO ENLARGE ISSUES

Westel Samoa, Inc. ("WSI"), Westel, L.P. ("WLP"), and
Quentin L. Breen ("Mr. Breen") (WSI, WLP and Breen collectively
"Petitioners"), by their counsel and pursuant to Section 1.229 of
the Commissions's Rules (47 C.F.R. §1.229), hereby jointly
petition the Presiding Judge to enlarge the issues in the
captioned proceeding by the addition of the following issue:

To determine, based on the evidence adduced in Issue 2,
whether Quentin L. Breen possesses the requisite
character qualifications to hold a Commission license.

In support of the addition of the requested issue, Petitioners
state as follows:¹

Procedural Status

Section 1.229(a) of the Rules allows "any party to a
hearing" to file a petition to enlarge the issues in the
proceeding "within 15 days after...the order designating the case

¹ Factual allegations herein, other than those as to
which official notice may be taken or are reflected in the
Commission's records, are supported by the attached declaration
of Mr. Breen, marked as Exhibit A.

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for hearing has been published in the Federal Register." Petitioners all are parties to the captioned proceeding.² Notice of the initiation of this proceeding was published in the Federal Register on October 15, 1997.³ This petition, therefore, is timely and appropriately filed by Petitioners.

Argument

The instant proceeding was occasioned by the Commission's concern regarding Mr. Breen's role in certain events related to the auction activities of PCS 2000, L.P.⁴ ⁵ At the time of the events giving rise to the Commission's concerns regarding Mr. Breen, he held voting and equity interests in Unicom Corporation ("Unicom"), the original sole general partner of PCS 2000.⁶ In the wake of an erroneous auction bid by PCS 2000, Mr. Breen withdrew from all equity and management participation in PCS 2000, Unicom, and Unicom's successor as the general partner of PCS 2000, SuperTel Communications Corporation

² Mr. Breen was made a party to this proceeding by Order, FCC 97M-173 (released October 20, 1997).

³ Westel Samoa, Inc., et al. (Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause), WT Docket No. 97-199, FCC 97-322 (released September 9, 1997), 62 Fed. Reg. 53629, October 15, 1997 ("HDO").

⁴ HDO, passim.

⁵ The limited partnership previously known as PCS 2000 changed its name to "ClearComm, L.P." However, as all relevant events occurred prior to the change of that entity's name, it will be referred to as "PCS 2000" in this pleading.

⁶ HDO, at ¶ 6.

("SuperTel").² Although the Commission granted PCS 2000's applications, it did not rule on Mr. Breen's qualifications to be a Commission licensee.⁸ Instead, the Commission, noting Mr. Breen's interests in the subject applications of WSI and WLP, specifically stated:

We will address our concerns regarding Mr. Breen's involvement in PCS 2000's deception in the context where Mr. Breen has an ownership and or controlling interest in [the WSI and WLP] markets, and make a determination therein of whether Mr. Breen possesses the requisite qualifications to hold a Commission license.²

Although both the NAL and the MO&O anticipated the need to resolve the question of Mr. Breen's personal qualifications to be a Commission licensee, generally, the HDO appears to extend the scope of this proceeding only to consideration of Mr. Breen's qualifications in the context of the WSI and WLP applications. It is that shortcoming which this petition seeks to rectify.

The resolution of Mr. Breen's general qualifications in this proceeding is necessary because the Wireless Telecommunications Bureau appears to take the position that an applicant may be found qualified to hold some licenses, even though that same applicant's qualifications to hold all licenses

² PCS 2000, L.P. (Notice of Apparent Liability for Forfeiture), 12 FCC Rcd 1703, ¶¶ 2-4 (1997) ("NAL").

⁸ PCS 2000, L.P. (Memorandum Opinion and Order), 12 FCC Rcd 1681 (1997) ("MO&O").

² NAL at ¶ 50.

may remain in question.¹⁰ Issue 2, as specified by the HDO, mandates an examination of Mr. Breen's qualifications. The determination of those qualifications in this proceeding should be res judicata for all purposes, not just in the limited context of the WSI and WLP applications.¹¹ That this proceeding will have such effect must be unequivocally established through the addition of the requested issue.

Once this proceeding is concluded, neither the Commission nor Mr. Breen should be required to expend further resources relitigating the effects on Mr. Breen's general qualifications of the events surrounding the PCS bidding error. Although the HDO recognized that questions regarding Mr. Breen's general qualifications remain unresolved pending examination of certain events connected with PCS 2000's bidding error,¹² the HDO failed to specify an issue going to Mr. Breen's general

¹⁰ See, e.g., Mercury PCS II, LLC, DA 97-1782 (released August 21, 1997).

¹¹ The resolution of Mr. Breen's qualifications to be a Commission licensee, generally, will not be a mere academic exercise. Mr. Breen's general qualifications have the potential to impact on his controlling interest in low power television ("LPTV") stations K69GC, K67FB, K65EX, K63EL, K61FG, K57GD, K55GP, K53EU, K51EV AND K47EM. In addition, The Breen Family Trust ("Trust"), of which Mr. Breen is a beneficiary, holds a warrant for a 19.6% equity interest in SuperTel. As noted in that warrant, a copy of which is attached hereto as Exhibit B, Mr. Breen and the Trust agreed that the Trust would take the warrant in lieu of stock in SuperTel in order to allow the Commission to grant PCS licenses to PCS 2000 without first having to resolve Mr. Breen's qualifications. That arrangement was acknowledged and relied upon by the Commission in the MO&O.

¹² See, e.g., HDO f. 13.

qualifications. It should be noted, however, that nothing in the HDO would indicate that the Commission intended to preclude consideration of Mr. Breen's general qualifications in this proceeding.

Conclusion

The HDO makes it clear that the events surrounding the PCS 2000 bidding error must be examined in order to resolve the qualifications of WSI and WLP. The HDO also makes it clear that the only questions seen to affect Mr. Breen's qualifications, and, in turn, the qualifications of WSI and WLP, are related to the PCS 2000 bidding error. Given this proceeding's background, and considering the facts to be examined under the presently specified issues in this proceeding, fairness and judicial efficiency will be served by the addition of the requested issue. By adding the requested issue, the Presiding Judge will assure that, at the end of this proceeding, there will be no need to further litigate the matters which are the subjects of this proceeding, at least as they relate to Mr. Breen, as well as WSI and WLP. Therefore, the addition of the required issue is warranted as a matter of law, equity and judicial efficiency, and, accordingly, the public interest will be served by the addition of the requested issue.

Respectfully submitted,

WESTEL SAMOA, INC.
WESTEL, L.P.
QUENTIN L. BREEN

By:



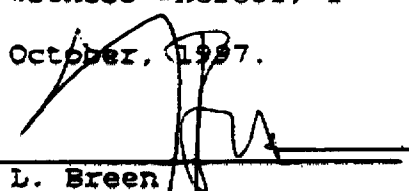
A. Thomas Carroccio
Brian Cohen
Ross A. Buntrock
BELL, BOYD & LLOYD
1615 L Street, N.W., #1200
Washington, D.C. 20036
(202) 466-6300

October 30, 1997

Counsel for Petitioners

EXHIBIT A

I, Quentin L. Breen, under penalty of perjury, hereby declare and state as follows: I have reviewed the "Petition to Enlarge" to which this declaration is attached, and hereby affirm that the factual allegations set forth therein, other than those as to which official notice may be taken, are true and accurate to the best of my knowledge and belief. I witness whereof, I affix my signature hereto this 30th day of October, 1997.



Quentin L. Breen

EXHIBIT B

WARRANT AGREEMENT

AGREEMENT dated as of the 28th day of June, 1996, between SUPERTEL COMMUNICATIONS CORP., a Puerto Rico corporation (the "Company"), and The Bank and Trust of Puerto Rico, as trustee of the Breen Family Trust (herein the "Purchaser").

WITNESS

WHEREAS, the Company is authorized to issue 1,000 shares of common stock without par value (the "Common Stock"); and,

WHEREAS, the Company became the general partner of PCS 2000, L.P., a limited partnership organized under the laws of Delaware (herein the "Partnership"), upon the completion of the Company's purchase of all assets and assumption of all liabilities and obligations of Unicom Corporation (herein "Unicom"), pursuant to that certain Asset Purchase Agreement dated June 18, 1996 (the "Purchase Agreement"); and,

WHEREAS, prior to the purchase of the assets of Unicom by the Company under the Purchase Agreement, Unicom served as general partner of the Partnership and, as such, provided certain management and administrative services to the Partnership (the "Business"); and,

WHEREAS, the Purchaser owns a 19.6% equity interest in Unicom, and in conjunction with the sale of the Unicom assets to the Company, it was originally offered to participate in the same amount and interest in the Company; and,

WHEREAS, in order to facilitate the FCC's review and processing of the Partnership's applications seeking FCC licenses for the PCS markets in which the Partnership was the winning bidder in the Block C Auction (as hereinafter defined), the Partnership, the Company, the Purchaser and Mr. Quentin L. Breen (herein "Mr. Breen") have agreed that neither Purchaser nor Mr. Breen shall have any direct or indirect interest in, or influence over, the activities of, the Partnership or the Company until such time as the FCC has determined that Mr. Breen possesses the requisite qualifications to hold an interest, direct or indirect, in an FCC license; and,

WHEREAS, the Company desires to provide the Purchaser with the right to purchase the amount of shares in the Company equal to 19.6% of the total capital stock of the Company, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises, the parties agree as follows:

Section 1. Warrant for Shares; Purchase Price. (a) Subject to certain conditions set forth hereinbelow, the Company agrees to grant, and does hereby grant to, Purchaser with the right to acquire up to 196 shares of Common Stock of the Company (herein the "Shares") for the purchase price of One Dollar (\$1.00) per share (the "Purchase Price"), such price herein agreed and acknowledged to be fair and reasonable. The right to purchase such Shares by

the Purchaser shall be subject to (i) the consent of the FCC to Purchaser's acquisition of the Shares, and (ii) the award of licenses to the Partnership by the FCC for such markets in which the Partnership was the successful bidder during the FCC's Block C PCS Auction (the "Block C Auction"). In the event that the FCC denies, by final order, Purchaser's application or request for FCC consent to Purchaser's acquisition of the Shares, this Agreement, and all of Purchaser's rights hereunder, shall be cancelled and terminated automatically.

(b) The Shares shall be shares of Common Stock of the Company and, when issued and delivered pursuant to the terms hereof, shall be fully paid and nonassessable, subject to all the terms and conditions of this Agreement. This provision is agreed upon with the expectation that all other shares of the Company will be subject to substantially the same terms and conditions relating to their transfer as herein set forth.

(c) The Purchaser, as such, shall not be, and not have any of the rights or privileges of a shareholder of the Company in respect of any Shares unless and until such Shares shall have been purchased by Purchaser in accordance with this Agreement.

Section 2. Term. The rights of Purchaser to purchase the Shares as hereunder set forth shall be in force for the period of time commencing on the date the last PCS license for such market in which the Partnership was the successful bidder is awarded to the

Partnership by the FCC, and ending ten (10) years thereafter, unless sooner terminated in accordance with the provisions hereof, except that, if during such term the FCC consents to the acquisition of the Shares by Purchaser, the right of Purchaser to acquire the Shares hereunder shall be in effect for a period of six (6) months from the date of issuance of such determination by the FCC. If at the end of the term hereof, Purchaser has not exercised its right to purchase the Shares hereunder by notice to the Company as set forth in Section 11 hereof, this Agreement shall terminate and no longer be in force.

Section 3. Adjustment of Shares. In the event that while this Agreement is in effect, the aggregate number of shares of Common Stock of the Company is changed into or exchanged for a different number, class or kind of shares of the Company or other securities of the Company by reason of merger, consolidation, corporate reorganization, recapitalization, reclassification, stock split, stock dividend, combination of shares, or otherwise, there shall be an appropriate and pro rata adjustment in the number and kind of Shares to the effect that, after such event, the Shares shall represent the same ownership interest in the Company represented immediately after such event as such Shares would have represented had they been issued, outstanding and held by Purchaser immediately before such event. In no event shall the Shares include any fractional share or part thereof. Any fractions resulting from any

such adjustment shall be treated in a manner consistent with the treatment accorded fractions attributable to shares issued and outstanding at such time. Any such adjustment made in accordance with the terms of this Section 3 by the Board of Directors shall be conclusive and shall bind the Purchaser and the Company.

Section 4. Representations, Warranties and Covenants of Purchaser as to the Shares. The Purchaser hereby represents and warrants to, and agrees with, the Company with respect to the Shares, as follows:

(a) The Shares will be acquired, if and when acquired, for the Purchaser's own account, not as a nominee or agent and not for the account of any other person. No other person will have any interest, beneficial or otherwise, in any of the Shares. The Purchaser is not obligated to transfer any of the Shares or any interest therein to any other person nor has the Purchaser entered into any agreement or understanding to transfer any said Shares. The Purchaser will acquire Shares, if and when acquired, for an indefinite period for investment purposes only and not with a view to the sale or distribution by public or private sale or other disposition, and does not have the intention of selling, granting any participation in or otherwise distributing or disposing of any or all of the Shares or any interest therein, except as herein provided or by applicable securities laws. The Purchaser does not

intend to subdivide its rights to the acquisition of Shares with any other person.

(b) The Purchaser is aware that it shall hold Shares acquired for an indefinite period of time subject to the provisions of, and that such Shares have not been registered under, the Securities Act of 1933, as amended (the Act").

(c) Without in any way qualifying the Purchaser's representations delivered hereunder, Purchaser further agrees that upon exercise of its rights hereunder, it shall in no event make any disposition of all, or any part of, or interest in, the Shares and that it shall not encumber, pledge, hypothecate, sell or otherwise transfer the Shares nor shall it receive any consideration for the Shares or for any interest therein from any Person, and if the Purchaser intends to dispose of any Shares hereunder, until prior to any proposed transfer, encumbrance, disposition, pledge, hypothecation or sale of any of the Shares, either (a) a registration statement on Form S-1 (or any other form replacing such form or appropriate for such purpose) under the Act with respect to the Shares proposed to be transferred or otherwise disposed of shall then be effective, or (b) (i) Purchaser shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition and (ii) Purchaser shall have furnished the Company with an opinion of

counsel in form and substance satisfactory to the Company to the effect that such disposition will not require the registration of any of the Shares under the Act or qualification of the Shares under any other securities law, and (iii) counsel for the Company shall have concurred with such opinion of counsel and the Company shall have advised and given notice to Purchaser of such concurrence.

(d) In connection with the Shares hereunder, if and when subscribed, such shares will constitute "restricted securities", as such term is defined in Rule 144 of the Act, and accordingly, the Shares must be held indefinitely, until subsequently registered under the Act, an exemption from such registration is available or the Shares are resold in conformance with Rule 144. The Purchaser understands and agrees that the Company is not under any obligation to register the Shares under the Act or to comply with any other exemption from registration thereunder, except as provided in this Agreement. Any Shares may be resold pursuant to Rule 144 under the Act only after being held for two (2) years following payment by the Purchaser of the full subscription price for all of the Shares which are proposed to be resold and thereafter only in conformance with the volume requirements of Rule 144.

(e) Notwithstanding the foregoing, in the event that Purchaser, in the opinion of counsel for the Company, acted in any manner not consistent with the representations and agreements set

forth in this Agreement, the Company may refuse to transfer the Shares until such time as counsel for the Company is of the opinion that such transfer will not require registration of the Shares under the Act or the qualification of the Shares under any other securities law.

(f) The Purchaser, or any entity affiliated with or in which the Purchaser may have a beneficial ownership interest, for the period of time that the conditions set forth in Section 1 hereof remain unsatisfied, shall not hold, purchase or acquire any units of partnership interest in the Partnership or any shares of the capital stock of or equity interest in the Company.

Section 5. Compliance with Restrictions; Right to Purchase not Assignable. (a) The covenants, conditions and restrictions herein contained shall be and constitute covenants, conditions and restrictions accepted by the Purchaser with regards to the Shares hereafter owned by Purchaser, or any transferee of Shares from Purchaser, directly or indirectly, and none of the Shares shall be sold, transferred, encumbered, pledged, hypothecated, given as a gift, or otherwise disposed of or alienated in any way to any person except in full compliance with the laws of the United States and the Purchaser agrees to take all such action as is necessary or convenient to prohibit the transfer of certificates for Shares.

(b) The rights herein granted to the Purchaser to purchase the Shares may not be assigned or conveyed to any person or persons

without the prior written consent of the Company, except as otherwise permitted hereunder.

Section 6. Additional Covenants of Purchaser. In addition to, and without limiting in any way or manner the terms and conditions herein set forth, the Purchaser shall not purchase or acquire any unit of partnership interest in the Partnership or any shares or other equity interest in the Company until the FCC issues its determination consenting to the exercise and purchase of the Shares hereunder by Purchaser.

Section 7. Further Assurances. Purchaser agrees to file, as soon as practicable after the date hereof, a request or application with the FCC seeking the FCC's consent to purchase the Shares subject to this Agreement, and to work diligently in obtaining such consent from the FCC; provided, however, that if Mr. Breen's qualifications are already the subject of an FCC proceeding, the Purchaser will not be required to file such application or request until the issuance of the FCC's determination with respect to that other proceeding. With respect to Purchaser's request or application to the FCC seeking the FCC's consent to Purchaser's acquisition of the Shares as herein set forth, in the event that the Company's cooperation is necessary in such connection, the Company agrees to join the Purchaser in such request or application.

Section 8. Exclusive Remedy. Purchaser agrees and acknowledges that its rights hereunder are limited solely to the receipt of warrants hereunder, and to the acquisition of the Shares subject to the terms and conditions herein contained, and in such connection, it shall not have any further rights or claims against the Company.

Section 9. Successors and Assigns. Without limiting the restrictions on transfer set forth herein, this Agreement shall bind and shall inure to the benefit of and be enforceable by the Company and Purchaser, and their respective successors, permitted assigns, personal or legal representatives, heirs and legatees, and shall be binding on any Persons to whom any of the Shares are transferred in violation of any provision of this Agreement and on any executor, administrator, successor or assign of any such Person.

Section 10. Severability. It is intended that each provision of this Agreement shall be viewed as separate and divisible and in the event that any provision hereof shall be held to be invalid or unenforceable, the remaining provisions shall continue to be in full force and effect.

Section 11. Notices. All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

Section 12. Non-waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 13. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

Section 14. Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Puerto Rico.

Section 15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be one and the same instrument.

Section 16. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to its subject matter and may not be modified or amended orally.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above mentioned.

Company

SUPERTEL COMMUNICATIONS CORP.

Purchaser

THE BANK AND TRUST OF PUERTO RICO, AS TRUSTEE OF THE BREEN FAMILY TRUST

By: 

Name: JAVIER O. CAMOSO
Title: PRESIDENT

By: 

Name: JOSE A. VELEZ
Title: Authorized Signatory

CERTIFICATE OF SERVICE

I, Ross A. Buntrock, an attorney with the law firm of Bell, Boyd & Lloyd, hereby certify that on this 30th day of October, 1997, I have deposited copies of the foregoing "Petition to Enlarge Issues" in the U.S. Mail, first-class postage prepaid, addressed to each of the following:

Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 228
Washington, D.C. 20036

Joseph Paul Weber, Esquire
Katherine Power, Esquire
Enforcement Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8308
Washington, D.C. 20554

Russell Lukas, Esquire
Thomas Gutierrez, Esquire
Lukas, McGowan, Nace &
Gutierrez, Chartered
1111 - 19th Street, N.W., Suite 1200
Washington, D.C. 20036


Ross A. Buntrock